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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/463,536 08/18/00 MORELLE

J DEM-1

EXAMINER

HM12/0627

BEYER A

ART UNIT

PAPER NUMBER

LUCAS & JUST  
60 EAST 42ND STREET  
NEW YORK NY 10165

1616

DATE MAILED:

06/27/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
**09/463,536**

Applicant(s)  
**Morelle et al**

Examiner  
**Alton Pryor**

Art Unit  
**1616**



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Aug 18, 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 8-16 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 20) ☐ Other:

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**Detailed Action**

***Claim Rejections under 35 U.S.C. 102(b)***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 8-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Valentin et al (GB 2 097 256; 11/3/82). Valentin discloses a method of applying a composition comprising copper or zinc butyrylproline, copper butyrylkeratine, and/or copper butyrylprolinate to crop and crop leaves. See abstract, page 5 lines 25-55. Valentin does not teach specifically that his composition will cause the crop to have a better yield or protect the crop from being destroyed by pests (animals, microorganisms, viruses). However, it is inherent that application of Valentin's composition to crop would increase crop yield and protect crop from pests.

3. Claims 8-14,16 are rejected under 35 U.S.C. 102(b) as being anticipated by DeMil (US 4,797,151; 1/10/89). DeMil discloses a method of applying a composition comprising copper butyrylcollagenate, copper caprylylkeratine, and/or copper caprylylglycinate to crop (grapes) and crop leaves. DeMil teaches that his method increases the yield of the crop. See abstract, column 2 lines 8-60, column 3 line 3 - column 4. DeMil does not teach specifically that his composition will protect the crop from being destroyed by pests (animals, microorganisms, viruses). However, it is inherent that application of DeMil's composition to crop would protect crop from pests.

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***Claim Rejection under 35 U.S.C. 103(a)***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over DeMil as applied to claims 8-14,16 above, and further in view of DeMil on record. DeMil recites all that is in claim 15 expect for the crop being beets. However, in the absence of unexpected results, one would have expected DeMil's method to be effective in beet crop. One would have been motivated to try DeMil's method on beet crop because DeMil suggests that his method is effective on a wide range of crop types. See column 3 lines 3-12.

***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton Pryor whose telephone number is (703) 308-4691. The examiner can normally be reached on Monday through Friday from 8:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for this Group is (703) 308-4556.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.

A handwritten signature in black ink, appearing to read "Alton Pryor", with a stylized flourish at the end.

Alton Pryor

Patent Examiner, AU 1616

6/25/01